



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
DE-8J

FEB 05 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND REGULAR MAIL

Michael B. Clarke
President
Lone Star Industries, Inc.
10401 North Meridian Street, Suite 400
Indianapolis, Indiana 46290

Re: Off-Site Rule Unacceptability Notice
Lone Star Industries, Inc.
EPA ID# IND 006 419 212

Dear Mr. Clarke:

This letter is to notify you that the United States Environmental Protection Agency (U.S. EPA) has determined that conditions exist at Lone Star Industries, Inc. (EPA ID number IND 006 419 212) (Lone Star), that may render this facility unacceptable for the receipt of off-site wastes generated as a result of any response activity under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

This determination of unacceptability becomes effective 60 calendar days from the date of this notice unless such conditions are eliminated. Your facility remains acceptable to receive CERCLA waste during the 60-day period. If, however, this unacceptability determination becomes effective, the facility will remain unacceptable until such time as the U.S. EPA notifies the owner or operator otherwise. The implementation of this notice does not prohibit U.S. EPA or delegated State programs from taking appropriate enforcement actions under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Air Act, CERCLA, state regulations or other laws.

On September 22, 1993, the Procedures for Planning and Implementing Off-Site Response Actions (Off-Site Rule) was published in the Federal Register (58 Fed. Reg. 49200). The purpose of the Off-Site Rule is to ensure that wastes from CERCLA sites are sent to environmentally sound facilities and do not contribute to future environmental problems. The Off-Site Rule was codified in the National Oil and Hazardous Substances Pollution Contingency Plan at 40 C.F.R. § 300.440, and supersedes the previously published Off-Site Policy and guidance. See also, CERCLA Section 121(d)(3), 42 U.S.C. 9621(d)(3). A copy of the Off-Site Rule is enclosed for your review.

This determination is based on information gained during an inspection performed by the Indiana Department of Environmental Management (IDEM) and includes violations noted in the

Notice of Violation sent to Lone Star on May 22, 2003 by IDEM. These violations are detailed below.

Article 3.1 of Title 329 of the Indiana Code incorporates many of the hazardous waste management standards found in 40 C.F.R. Parts 260 through 273, including those identified below.

1. 40 C.F.R. § 265.17(b)

Where specifically required by other sections of this part, the treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, must be conducted so that it does not:

- (1) Generate extreme heat or pressure, fire or explosions, or violent reaction;
- (2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;
- (3) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to pose a risk of fire or explosions

On October 7, 2002, this facility commingled wastes in Tank 4, which resulted in the production of extreme heat and the release of uncontrolled vapors through the emergency vent.

2. 40 C.F.R. § 265.32(d)

The owner or operator of a hazardous waste facility must equip the facility with water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

On October 7, 2002, this facility was not equipped with water at adequate volume and pressure to supply water hose streams.

3. 40 C.F.R. § 265.56(i)

In terms of emergency procedures, the owner or operator of a hazardous waste facility must notify the Commissioner and appropriate State and local authorities, that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.

40 C.F.R. § 265.56(h) requires that the emergency coordinator ensure that, in the affected area(s) of the facility: (1) no waste that may be incompatible with the released material is treated, treated, stored, or disposed of until cleanup procedures are completed; and (2) all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

This facility did not notify the Commissioner and appropriate State and local authorities that it was in compliance with 40 C.F.R. § 265.56(h) before resuming operations in the area of the facility affected by the reaction in Tank 4.

4. **40 C.F.R. § 265.56(j)**

In terms of emergency procedures, the owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Commissioner.

This facility did not provide a written incident report to IDEM within 15 days after the incident.

The Off-Site Rule provides the facility owner or operator an opportunity to request an informal conference with the U.S. EPA Region 5 staff and legal counsel to discuss the basis for a facility's potential unacceptability determination. The informal conference request must be made within 10 calendar days from the date of this letter. In addition to, or instead of requesting such a conference, you may submit written comments within 30 calendar days from the date of this letter.

If an informal conference is held or written comments are submitted, U.S. EPA will inform the facility owner or operator whether or not the information is sufficient to show that the facility is operating in compliance. Unless U.S. EPA determines that the information provided is sufficient, the facility will become unacceptable 60 calendar days after the date of this letter. On the date this determination becomes effective, the responsible entities shall cease the transport of CERCLA waste to your facility in accordance with the Off-Site Rule.

If your facility is determined to be unacceptable after the informal conference and/or the submission of written comments, you may request that the Regional Administrator reconsider this unacceptability determination. Such a request must be made in writing within 10 calendar days after hearing from the U.S. EPA Regional office, following the informal conference or submittal of written comments. Such a review does not automatically stay the determination beyond the 60-day period.

This letter is being sent to you by both certified and first class mail, return receipt requested, in order to ensure that you receive it promptly. If you wish to request an informal conference, or submit written comments, or if you have any questions regarding this letter, you may write to William Damico, U.S. EPA Region 5, 77 West Jackson Blvd., DE-9J, Chicago, Illinois 60604, or call him at 312-353-8207.

Sincerely,



Margaret M. Guerriero, Director
Waste, Pesticides, and Toxics Division

Enclosure

cc: Aubrey N. Sherif, Senior Environmental Manager
Hazardous Waste Section
Indiana Department of Environmental Management